

REMARKS:

Reconsideration of the rejections is respectfully requested. The status of the claims is as follows:

Currently Amended:	1, 23, 32, 34, 37, 39, 40
Currently Cancelled:	36, 52
New:	None
Pending:	1, 3-32, 34-35, 37-40, 51

The claims have been amended to more clearly define the invention. Support for the amendments is either apparent, or is as described in the text below.

In claim 1, the recitation of "three or more" is taken from prior claim 52. Hence, no new matter, and no new issue, is added. The deletion of "amino acid precursors" (claim 1, claim 23, claim 37) is made, for the sake of expediting prosecution, in direct response to a rejection as to form. The clarification of the context for the oncotic agent in claim 1 is made, for the sake of expediting prosecution, in direct response to a rejection as to form. Claim 34 is amended to recite exactly what amino acid precursors are comprised, based on prior claim 36. The replacement of "including" with "comprising" is made, for the sake of expediting prosecution, in direct response to a rejection as to form. No new matter, and no new issue is added.

The Applicants respectfully submit that the Amendment meets the requirements of 37 CFR 1.116 since:

- A. The Amendment cancels claims 36 and 52.
- B. The Amendment complies with requirements of form expressly set forth in the Office Action by the amendments to "amino acid precursors," the recitation of the oncotic agent and "including."
- C. The Amendment places the claims in condition for allowance or in better condition for consideration on appeal.

Accordingly, Applicants respectfully request entry of the Amendment.

Claim Rejections - 35 U.S.C. §103(a)

The claims stood rejected under 35 U.S.C. §103(a) based on an assertion of obviousness based on Penska, US 5,851,544, or Osterholm, US 4,981,691, or Osterholm, US 4,868,085. The Office Action asserts that "the composition used [is] the composition of claim 1." This rejection is respectfully traversed.

As stated in MPEP 2143.01:

Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

Even if a given combination of references teach the individual elements of a claimed invention, the Court of Appeals of the Federal Circuit has repeatedly held that to support an obviousness rejection, the references must suggest the *desirability* of modification of the cited documents to produce the claimed invention. For instance, in In re Laskowski, the Federal Circuit held that the "mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the *desirability* of the modification." In re Laskowski, 871 F.2d 115, 117, 10 USPQ2d 1397, 1398 (Fed. Cir. 1989) (citation omitted, emphasis added).

The Office is obligated to apply the cited art to seek to meet these standards. Applicant respectfully submits that the rejections do not meet this standard, leaving the Applicant without a concrete rejection upon which to focus its arguments or amendments.

For example, claim 1 is not and never was to a composition per se: it is to a kit of multiple compositions, 3 to 8, with pre-measured amounts of components that form a fluorocarbon nutrient emulsion, with the constituent compositions selected to provide stability. It is respectfully submitted that Penska has no disclosure or suggestion of a kit of such pre-measured component compositions. It is respectfully submitted that Osterholm '085 has no disclosure or suggestion of a kit of such pre-measured component compositions. It is

respectfully submitted that Osterholm '691 has no disclosure or suggestion of a kit of such pre-measured component compositions.

Claims 9 and 12 enumerate the constituent compositions in more detail, in a way clearly not disclosed or suggested in Penska, or in Osterholm '691, or in Osterholm '085. Claims 19-21 recite multichambered bags with pressure release seams, something not disclosed or suggested in Penska, or in Osterholm '691, or in Osterholm '085.

Claims 23-27 are to kits with multiple component composition, pre-measured, that make a vehicle corresponding to the fluorocarbon nutrient emulsion, but lack the fluorocarbon. This aspect is something not disclosed or suggested in Penska, or in Osterholm '691, or in Osterholm '085. Claim 28 is to a kit of the vehicle kit, together with the nutrient emulsion kit, something not disclosed or suggested in Penska, or in Osterholm '691, or in Osterholm '085.

Claims 32, 34-40 are to a single composition. But, Osterholm '691 does not disclose or suggest a solution without glycine. Penska does not include meaningful disclosure about the relevant amino acid-related components. Osterholm '085 does not disclose the lack of glutamic acid or glutamine. To the extent that Osterholm, 5,085,630 might be cited, Osterholm '630 does not disclose the lack of glycine.

Accordingly, the rejection is in error and should be withdrawn.

Claim Rejections - 35 U.S.C. §102(e)

The Office Action asserts that the claims are anticipated by Osterholm, '691. Without conceding that Osterholm '691 is prior art, Applicant respectfully submits that the above argument relating to §103(a) amply explains how this rejection is in error. Applicant respectfully submits that the rejection should be withdrawn.

Claim Rejections - 35 U.S.C. §112, ¶2

The claims stood rejected based on objections to the clarity of certain terms in the claims. As to "including", this term has been replaced with "comprising."

As to "amino acid precursors," first, Applicant respectfully submits that those of skill in the nutritional arts know what these are. However, to accelerate prosecution, the term has been deleted where not needed and, substituted or defined by a more specific list elsewhere.

The phrase "in conjunction with the other components of the *solution*" in claim 1 was indeed in error. As shown in claims 9 and 12, the proper reference is to the fluorocarbon nutrient emulsion that will be formed from the components. Those of skill will recognize that many components of the type used in nutrient solutions contribute to oncotic pressure. Thus, the recited component is the balancing additive over the other nutrient components. Applicant respectfully submits that there is no ambiguity.

Accordingly, Applicant respectfully submits that the rejection should be withdrawn.

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Conclusion

In light of these amendments and remarks, it is respectfully submitted that the Amendment should be entered, the rejections should be withdrawn, and that the application is in condition for allowance.²

Respectfully submitted,



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